

Service Date: March 5, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
OF Montana Rail Link, Inc. to )	
discontinue its agency operations )	DOCKET NO. T-9453
at Three Forks, Montana )	ORDER NO. 5984

\* \* \* \* \*

FINAL ORDER

\* \* \* \* \*

APPEARANCES

FOR THE APPLICANT:

Edward A. Murphy, 201 West Main, Missoula, Montana 59802

FOR THE COMMISSION:

Denise Peterson, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

HOWARD L. ELLIS, Commissioner and Hearing Examiner

BACKGROUND

Montana Rail Link (MRL) applied to the Montana Public Service Commission (Commission) on August 14, 1989 for authority to close its agency at Three Forks, Montana (Three Forks) and take the depot building out of service, pending a historical survey to determine the ultimate disposition of the building.

On October 20, 1989 MRL filed its Amended Petition with additional exhibits, including updating through 1988, and a request to dispose of the agency facility.

After proper notice the Commission held a public hearing on November 29, 1989 in the Annex Building of the United Methodist Church, 14 Cedar Street, Three Forks, Montana. In the published Notice of Public Hearing, the Commission stated that it would consider rail safety in this proceeding, in addition to the railroad's duty to provide shipping facilities. At the conclusion of the hearing, the Applicant stipulated to a final order.

At the hearing MRL notified the Commission of a correction to the Amended Petition. The agent in Three Forks is a regular employee of MRL, not an employee from the temporary service agency.

## SUMMARY OF TESTIMONY

### Testimony of Applicant

Orson E. Murray and Cecilia D. Wilke testified for MRL.

Mr. Orson E. Murray, Director of Operation Information Systems for MRL, is responsible for the operating information gained from the computerized billing system. Mr. Murray prepared and sponsored Exhibit Nos. A through G which show shipments handled by Burlington Northern (BN) from January, 1986 through October, 1987 and shipments handled by MRL from November 1, 1987 to the date of this hearing. These exhibits also include unit train shipments and specialized shipments out of Three Forks. Mr. Murray testified that MRL has centralized all agency functions in Missoula, Montana, with the computer system, billing, accounting, administration,

operations and dispatching. This central agency is immediately accessible to shippers through a toll-free number.

Mr. Murray testified that no agency functions are provided by the agent in Three Forks. If called, the agent directs a shipper to the toll-free number. The agent is a protected employee. The agent dabbles in art and knits during work hours with the permission of MRL.

Mr. Murray testified that MRL's marketing and operating personnel act as sales representatives and maintain contact with shippers. MRL aggressively promotes shipping business, according to his testimony. The marketing department works to find and develop new business for MRL, and it maintains contact with shippers on current movements.

According to Mr. Murray, the tracks to Three Forks is a branch line. The agency facility is located on Main Street in Three Forks, about 7/10's of a mile from the track, such that the agent cannot do roll-by inspections from the facility. The facility serves no purpose other than housing the agency, and MRL desires to sell and dispose of the building.

The exhibits sponsored by Mr. Murray show that the agency at Three Forks, including blind sidings, forwarded 2,494 cars and received 729 cars in 1986. In 1987 the agency forwarded 4,269 cars and received 769. At the agency, 4,983 cars were forwarded in 1988 and 1,274 were received. The figures from January to September, 1989 were 3,852 cars forwarded and 951 received. The agency was profitable.

At the request of Mr. James T. Mular, State Legislative Director for Transportation and Communications International Union, and without objection from MRL's counsel, the Commission's counsel asked Mr. Murray questions prepared by Mr. Mular. Mr. Murray responded that MRL keeps all company forms such as car orders, demurrage reports, bills of lading, car release forms, train lists and wheel reports in Missoula. The agent keeps no information in Three Forks. The Three Forks agency is responsible for blind sidings at Manhattan, Logan, Trident, Clarkston, Stanley, Willow Creek, Sappington and Harrison. The Three Forks agency provides no service. All agency services are provided through Missoula. MRL has shippers at Manhattan (an elevator and a seed warehouse), at Trident (a cement plant), at Clarkston and Stanley (grain), at Three Forks (talc and grain) and at Sappington (talc).

At MRL's request and by stipulation, the safety evidence from the earlier hearing at Belgrade, Montana in Docket No. T-9454, was incorporated into the record (Paragraphs 13-16).

John L. Grewell, MRL's Superintendent of train crews located at Laurel, Montana, testified on the issue of safety. Approximately every 20-30 minutes trains pass over hot box detectors which are devices to detect hot ball bearings. There are also steel plates between the rails to detect dragging equipment. Typically, train crews inspect and/or do roll-by inspections three to four times in 200 miles. Laurel, Montana is a federally mandated 1,000 mile inspection point. Everything on board the inbound train is thoroughly inspected at Laurel, then again on the outbound trains. The agent at Belgrade/Bozeman has no training and no duties related to inspection, safety or hazardous materials. Besides, the agent works only 40 hours per week, while the crew inspections go on around the clock. Mr. Grewell testified that crews are required to carry information on hazardous materials to make available to first responders on the scene, e.g., the fire department. The agent is unable to do anything about hazardous materials.

Richard L. Keller, MRL's chief engineering officer in Missoula in charge of track functions, bridge and building, testified that any time a train passes a section crew or other MRL employees, both sides of the train are inspected. A section crew is stationed at Belgrade. Detectors are located along the tracks every 25-30 miles to sense excess heat as the axles pass over and report to the engineers. At the slow speeds required in mountainous territory, however, there are few hot boxes. Mr. Keller testified that the agent serves no safety function. There are 18 hot box detectors now. MRL also installed dragging equipment detectors.

Dan Sokolowski, MRL's general mechanical foreman in charge of the train yard, shop and locomotives, handles the 1,000 mile inspections at Laurel. These are more than roll-by inspections. The railroad keeps records of the 1,000 mile inspection as required by federal law. The station agent can add nothing to the inspection, he testified.

Perry T. Smith, MRL locomotive engineer from Missoula, Montana, testified that the engineers and crews do visual inspections of all the trains they pass daily. The engineer informs the trains passing whether their end of train devices are working. He personally inspects his own train. The hot box and dragging equipment detectors communicate with the engineer by electronic voice box. He testified that an agent could add nothing to safety.

Cecilia D. Wilke, presently a clerk for MRL in Laurel, Montana, was the agent at Three Forks from August 1, 1988 to May 1, 1989. She testified that she had no contact with customers at Three Forks once MRL centralized agency functions in Missoula. Ms. Wilke testified that she then had nothing but free time and requested a transfer.

As requested by Mr. Mular (see Finding No. 11 herein) and without objection, the Commission counsel inquired of Ms. Wilke whether she had been under a union agreement which defined her duties as an agent at Three Forks. She testified affirmatively that her duties included some clerical, some driving and some signing of bills of lading. She was told to cease the duties under her contract once MRL centralized agency duties.

#### Testimony of Public Witnesses

No shippers appeared to testify. No residents of Three Forks or environs appeared to testify as to shipping problems or as to any concerns about safety.

James T. Mular, State Legislative Director for the Transportation and Communications International Union, resides in Butte, Montana. He testified in opposition to closure of the Three Forks agency. According to Mr. Mular, before MRL's purchase BN systematically closed the other agencies in the area. By agreement between MRL and BN, a previous agent remained at Three Forks for good service provided. This agent was succeeded several times. Mr. Mular sponsored Exhibits TCU 1-4 on agency duties for MRL. TCU Exhibits 1 and 2 are MRL "Clerks Bulletin" for bidding the agent/general clerk position at Three Forks, although TCU 2 shows the location at Missoula. TCU Exhibit 3 is a wheel report apparently kept by the agent in 1988. Exhibit 4 is a bill of lading signed by the agent on September 1, 1988. Mr. Mular testified that the present agent was told not to do anything despite the union agreement to provide agency services at Three Forks. Mr. Mular contended that MRL was relying upon its centralized office in Missoula and on the "operation officers" for difficult problems, without presenting evidence on how many personnel were covering how much area. Mr. Mular also contended that there were not sufficient hot box detectors, although he did not know where they were placed. Mr. Mular questioned the good

faith of MRL, observing that the agency was defacto closed without the permission of the Commission.

With the permission of the Commission and without objection, Mr. Mular submitted late filed TCU Exhibit 5, agreement between MRL and its union represented employees. Mr. Mular represented that the exhibit supported previous exhibits related to agency duties allegedly abrogated by MRL. The first highlighted portion states that "paramount emphasis shall be placed upon providing efficient service to customers." (Article I, General Principles, A.) The second highlighted portion refers to the protected status of the employee and not to agency service. (§ 69-14-1001, MCA)

### DISCUSSION, FURTHER FINDINGS AND ANALYSIS

The Commission finds that the agency at Three Forks is profitable and that no shippers or receivers of freight appeared in opposition to the application. Likewise, no members of the general public affected by the presence of the agency in their community appeared to testify.

Before the legislature amended § 69-14-202(2), MCA in 1989, in order to close an agency facility located in a community on or before January 1, 1987, the railroad had to demonstrate to the Commission that the facility was no longer required for the public convenience and necessity of the shipping public. The 1989 legislature modified § 69-14-202(2), MCA, adding this language:

In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

The Commission reads this amendment to § 69-14-202, MCA, to reflect the intention of the legislature to expand Commission analysis to include impacts of the proposed closure upon the general public as well as shippers. A review of the legislative history of this amendment supports such an interpretation.

Based upon the absence of shipper testimony and on MRL's evidence that its centralized office in Missoula is willing and able to provide, and has provided, all necessary services, the Commission finds that the convenience and necessity of the shipping public does not require the Three Forks agency to remain open. The Commission further finds that the union representative's

testimony did not support an inference that the general public would be burdened by the closure of this agency. The union representative's testimony concerned the effect of closure upon the individual employee and the "defacto closure." Any safety concerns were unspecified and undocumented.

The manner in which an agency is staffed is a management decision that will vary with the needs of a particular locality. The Commission has never defined specifically what the staffing of an agency requires and will not do so now. However, § 69-14-202(1), MCA, requires that the railroad staff agencies the Commission has not authorized to close as they were staffed on or before January 1, 1987. If the railroad demonstrates that the agency facility is not needed pursuant to § 69-14-202(2), MCA, then the Commission may authorize the closure. MRL has made the requisite showing that staffing of the agency at Three Forks is not required for the public convenience and necessity either of the shipping or the general public. MRL's demonstration was not refuted by either the shipping or the general public directly or indirectly affected by the proposed closure.

MRL further demonstrated, without refutation, that the Three Forks agency is not required to meet safety concerns of the general public.

No specific rule can be used to determine whether public convenience and necessity requires a given service to be performed. The facts in each case must be separately considered. See Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Board of Railroad Commissioners, 225 P.2d 346 (Mont. 1953) cert. den. 346 U.S. 823. The Commission concludes that in this case MRL has established that public convenience and necessity do not require the continuance of an agency at Three Forks, Montana.

CONCLUSIONS OF LAW

1. The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA. The petition to close the Three Forks agency is made pursuant to 69-14-202, MCA (1989).
2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.
3. Public convenience and necessity do not require the continuance of an agency at Three Forks, Montana.
4. The Commission concludes that Montana Rail Link may dispose of the Three Forks depot. Prior to its disposal, MRL should determine whether the building is of historical significance and preserve it if it is historically significant or allow local governments in the area the opportunity to utilize the building. The Commission directs Montana Rail Link to inform the Commission in writing of the disposition of the building.

ORDER

NOW THEREFORE IT IS ORDERED that Montana Rail Link's application in Docket No. T-9453 to close the agency at Three Forks, Montana, and dispose of the depot facility is Granted.

IT IS FURTHER ORDERED that Montana Rail Link shall apply 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED that pursuant to stipulation that this is a final order.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this docket that were not ruled on are denied.

IT IS FURTHER ORDERED that this order be effective immediately and that a full, true and correct copy be mailed to the Applicant and all parties of record.

Done and Dated this 5th day of March, 1990 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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CLYDE JARVIS, Chairman

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HOWARD L. ELLIS, Vice Chairman

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JOHN B. DRISCOLL, Commissioner

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WALLACE W. "WALLY" MERCER, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.